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Special Civil Application No.276 of 1984

Date of Decision: 19-7-95

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Mr.Y.V.Shah,learned counsel for the petitioner.

Mr.Sanjay M.Doshi,learned counsel for the respondents.

Coram: (M.R. Calla, J.)

Dt:19-7-95

ORAL JUDGMENT:

1. This matter came up before the Court yesterday i.e. on 18-7-95 and during the course of the arguments, it was found that the Umreth Municipality was not a party. The learned counsel for the petitioner moved for amendment. Amendment has been granted. Umreth Municipality has been impleaded as party-respondent No.2. Rule is issued to the Umreth Municipality and Mr.Doshi,learned counsel, appearing for respondent

No.1,has accepted the notice on behalf of Umreth Municipality also and has waived the service of the Rule on behalf of the Umreth Municipality i.e. respondent No.2 also.

2. The arguments were heard.

3. Learned counsel for the petitioner has submitted that the petitioner was working as a Water Works Inspector in the Umreth Municipal Board since May, 1974 and he has also referred to the averments made in the petition to show that the petitioner has through-out been espousing the cause of the Umreth Municipal Employees Union and while doing so, he had incurred the displeasure of the then President of the Municipality at Umreth and had also suffered the suspension at his hands in past i.e. in the year 1980. The learned counsel for the petitioner has invited my attention to the order whereby the petitioner was placed under suspension on 19-11-83 by the then President and the order shows that the petitioner was placed under suspension because he had hurled abuses to the then President and had threatened him to kill. It is submitted by the learned counsel for the petitioner that these very allegations were mentioned in the suspension order dated 19-11-83,which is annexed with the Special Civil Application as Annexure "D". He has also been criminally prosecuted. The prosecution was launched in the year 1984 in Criminal Case No.58 of 1984 for the offences punishable under Sections 504 and 506(2) of the I.P.C. The petitioner has challenged the aforesaid suspension order on three grounds:

(1) The order had been passed by the President of the Municipal Board and he had no competence to pass the suspension order.

(2) The order was malafide.

(3) The order has been passed contrary to Rules.

4. The learned counsel for the petitioner has placed on record an order dated 31-8-87, which has been passed during the pendency of this Special Civil Application, by the Court of Judicial Magistrate,First Class, Umreth and that this Judgment would show that the petitioner has been acquitted on 31-8-87 by the court for the allegations on which he has been placed under suspension and for which the prosecution was launched against him. It is also submitted by the learned counsel for the petitioner that this acquittal order has attained finality.

5. It has also been submitted that with regard to the same incident and same allegations contained in the suspension order dated 19-11-83, the petitioner was subjected to a charge-sheet on 15-2-84 and an inquiry was proposed against him. The petitioner challenged the matter before the Civil Judge (J.D.), Umreth and the inquiry proceedings were stayed. However, the stay order was vacated on 19-10-88, but no proceedings in the inquiry were held and in this inquiry, except giving of the charge-sheet dated 15-2-84, no proceedings whatsoever have been held till today even after the vacation of the stay order by the Civil Court on 19-10-88 and yet the petitioner's suspension was not revoked and he was not reinstated despite the acquittal dated 31-8-87. It is submitted that the petitioner, while he was under suspension, resigned from the services of the Municipal Board of Umreth on 11-11-94 and as stated by the learned counsel for the petitioner, he contested the election for being a Member of the Municipal Board and after resignation when he contested the election, he was elected and returned and at present he is not only Member of the Municipal Board, but he is also a Chairman of the Executive Committee of the Municipal Board.

6. Mr. Doshi, learned counsel for the respondent-Board, has not disputed the factual position that the petitioner was acquitted on 31-8-87 in the prosecution on the basis of the same allegations as contained in the suspension order, that the charge-sheet was given on 15-2-84, but no proceedings were taken in the departmental inquiry even after the vacation of the interim order dated 19-10-88 and that the petitioner has resigned on 11-11-94 and at present he is the Chairman of the Executive Committee of the Municipal Board of Umreth. Whereas the petitioner has already resigned from the services and no inquiry proceedings whatsoever has been held ever since the service of the charge-sheet in the year 1984, there is no question of now continuing this inquiry after a period of more than 11 years at this stage, when the petitioner is no more in the services of the Municipal Board of Umreth. Whereas the petitioner has already been acquitted on 31-8-87, I need not go into the questions as raised by the learned counsel for the petitioner that the suspension order has been passed by the President without competence or that it was malafide or that it has been passed contrary to the Rules, for the simple reason that the very basis on which the suspension order had been passed on 19-11-83 has become non-existent in view of his acquittal by the Court. Petitioner had

been prosecuted for the allegations made in the suspension order dated 19-11-83 and once the petitioner has been acquitted by the court, the whole edifice, on which the suspension order was based, goes away and the suspension order has to be taken to be unwarranted and it becomes non-existent. The suspension order dated 19-11-83 is, therefore, quashed and set aside on the basis of the petitioner's acquittal dated 31-8-87 for the very same allegations, which were contained in the suspension order. Whereas the respondents have also not taken any proceedings in the departmental inquiry for which charge-sheet had been served in the year 1984 and in the meantime, the petitioner has already resigned while he was under suspension, now there is no question of any inquiry being held against the petitioner after his resignation, when the respondents themselves have not dealt with the matter and have shown utter inaction for a period of nearly 11 years.

7. The suspension order dated 19-11-83, therefore, stands quashed and set aside and the petitioner has to be deemed to be continuing in service as if the suspension order dated 19-11-83 had never been passed against him and all consequential benefits has to be paid to the petitioner till the date of his resignation i.e. 11-11-94. The petitioner shall also be paid all consequential retiral benefits. This Special Civil Application is accordingly allowed and the rule is made absolute, with no order as to costs.